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SUPREME COURT, U.S.

NO. 86-1604

IN THE

SUPREME COURT OF THE UNITED STATES

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

-vs-

RONNIE WILLIAMS,

Respondent-Appellee.

MAY 21 PAGE 3

**MOTION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS**

CHIAMP & WENGER, P.C.

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NO. 86-1604

IN THE  
SUPREME COURT OF THE UNITED STATES

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

-vs-

RONNIE WILLIAMS,

Respondent.

**APPELLEE'S MOTION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS**

The Respondent, RONNIE WILLIAMS, asks leave to file the attached Brief in Opposition to Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Supreme Court Rule 46.

Respondent states as follows in support of this motion:

1. The Recorder's Court for the City of Detroit found Respondent indigent and without means to secure counsel on June 23, 1985.

2. On January 17, 1986, the Recorder's Court for the City of Detroit found Respondent indigent and without means to secure counsel for appellate review.

3. A certified copy of Respondent's affidavit of indigency is attached pursuant to Supreme Court Rule 46; 18 U.S.C. Subsection 3006(A)(d)(6).

WHEREFORE, Respondent asks this Honorable Court for leave to

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proceed in forma pauperis.

Respectfully submitted,

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Dated: May 4, 1987

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PEOPLE OF THE STATE OF MICHIGAN,

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Respondent.

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BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI

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**COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW**

WHERE A 23-MONTH DELAY EXISTS BETWEEN THE ARREST AND ARRAIGNMENT OF THE DEFENDANT ON FORMAL CHARGES, DOES THE RIGHT TO A SPEEDY TRIAL ATTACH UPON THE ARREST (IN CIRCUMSTANCES WHERE THE DEFENDANT WAS ARRESTED, INTERROGATED AND RELEASED ON RECOGNIZANCE)?

**COUNTERSTATEMENT OF THE CASE**

On July 13, 1983, defendant was arrested without a warrant for possession with intent to deliver a controlled substance in violation of Mich. Comp. Laws Ann. Subsection 333.7401(2)(a), taken to the police station, interrogated and then released on recognizance without a date to appear in court. In September 1983, after analysis of the substance taken from defendant at the time of his arrest was found to be heroin, a complaint and warrant for defendant's arrest was issued. In June 1985, while investigating a unrelated matter, the police discovered the outstanding warrant and again arrested defendant.

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No efforts were made by the police to serve the warrant between the date of issuance, September 16, 1983, and the date of the unrelated search in June, 1985.

Following his waiver of preliminary examination, Defendant successfully moved to dismiss based on lack of speedy trial.

On appeal, the Michigan Court of Appeals, in an unpublished per curiam opinion, held that the right to a speedy trial attaches upon arrest, and is not dependent upon whether the defendant is kept in custody.

The appellate court, then, reviewed the record and concluded that the trial court did not abuse its discretion in dismissing the charges against defendant.

#### REASONS FOR DENYING THE WRIT

THE MICHIGAN COURT OF APPEALS HOLDING THAT RESPONDENT WAS DENIED HIS RIGHT TO A SPEEDY TRIAL WAS BASED UPON THE CORRECT APPLICATION OF FEDERAL CASE LAW AND THE PETITIONER'S RELIANCE UPON FEDERAL CASE LAW IS MISPLACED AND MISLEADING

The prosecutor argues that a defendant who is arrested but not confined [between arrest and arraignment on the formal charges] does not have a sixth amendment right to a speedy trial.

He contends there is no legal requirement to bring the Defendant to trial after the arrest and issuance of the arrest warrant and, thus, the speedy trial inquiry is inappropriate.<sup>1/</sup> He so contends, even though he has admitted throughout the proceedings that the Defendant was arrested in 1983 but not brought to trial for 23 months.

The Petitioner distinguishes the arrest of Ronnie Williams, arguing, "that's not an arrest for the purpose of a speedy trial

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1/ Transcript of proceedings Recorder's Court for the City of Detroit, pp. 6, 7.

right" and attempts to set up two standards for arrests; one which would trigger the Sixth Amendment guarantees and the other which would not.<sup>2/</sup> There is no such distinction in the law.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial \* \* \*," US Const, Am VI. In Michigan, the right to a speedy trial is guaranteed by the Michigan Constitution, Const 1963, art 1 §20 and Mich. Comp. Laws Ann. § 768.1. Although the Sixth Amendment speedy-trial provision has no application until the putative defendant in some way becomes an "accused", United States v. Marion, 404 U.S. 307, 313; 92 S. Ct. 455, 459; 30 L. Ed. 2d 468, 474 (1971), the constitutional right to a speedy trial commences upon either formal indictment or upon actual restraint of the accused. 404 U.S. 307, 320.

The Petitioner quotes and emphasizes a passage from Marion to support his theory that an arrested defendant, who has not been indicted [or formally arraigned], must be restrained, or in custody, before the right to a speedy trial is triggered. The reliance upon this passage is misplaced and Petitioner attempts to mislead by selectively quoting only a portion of a section of the opinion which, when placed in the proper context, supports the Respondent's position.

Following the passage quoted by the Petitioner, the Court stated, "Invocation of the speedy trial provision thus need not await indictment, information, or other formal charge.<sup>3/</sup> But we

2/ Transcript of proceedings Recorder's Court for the City of Detroit, p. 8. Petition for a Writ of Certiorari, p. 13.

3/ The court, at fn. 12, quoting from the ABA Standard's Relating to Speedy Trial, n. 10, supra, at 6, defined the time at which the beginning of the delay period should be computed as "the date the charge is filed, except that if a defendant has been continuously held in custody or on bail or recognizance until that date to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, then the time for trial should commence running from the date he was held to answer." Rule 2.2.(a). (emphasis added.)

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decline to extend the reach of the amendment to the period prior to arrest. Until this event occurs, a citizen suffers no restraints on his liberty and is not the subject of public accusation; his situation does not compare with that of a defendant who has been arrested and held to answer." 404 U.S. 307, 321.

Reading this section of the opinion in its entirety, along with fn. 12 of the opinion, it is clear that the Sixth Amendment guarantee applies to the situation where a defendant is arrested and released and that it is the actual arrest which causes the defendant to suffer the restraints upon his liberty that engage the particular protections of the speedy trial provision of the Sixth Amendment.

Further, in United States v. McDonald, 456 U.S. 1; 102 S. Ct. 1497; 71 L. Ed. 2d 696 (1982), the court specifically states that, "in addition to the period after indictment, the period between arrest and indictment must be considered in evaluating a speedy trial clause claim," citing Dillingham v. United States, 423 U.S. 64; 96 S. Ct. 303; 46 L. Ed. 2d 205 (1975).

In this case, the actual restraint of the accused occurred when he was arrested, transported to the station, "booked", and interrogated. He was, then, released on recognizance, but held to answer the criminal charge as evidenced by the fact that the warrant was never dismissed but was served and prosecuted upon 21 months later. Under United States v. Marion, *supra*, he was entitled to a speedy trial which he was denied.

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THE MICHIGAN COURT OF APPEALS HOLDING THAT  
THE RIGHT TO A SPEEDY TRIAL ATTACHES UPON  
ARREST WAS BASED UPON THE CORRECT APPLICATION  
OF MICHIGAN LAW, WHICH THE PETITIONER FAILS  
TO ADDRESS OR ANALYZE

The prosecutor argues that the Michigan Court of Appeals, in holding that an arrest rather than an arraignment of the accused

on formal charges triggers the Sixth Amendment right to speedy trial, misconstrues this court's holdings [in United States v. Marion, 404 U.S. 307, 313; 92 S. Ct. 455, 459; 30 L. Ed. 2d 468, 474 (1971) and United States v. McDonald, 456 U.S. 1; 102 S. Ct. 1497; 71 L. Ed. 2d 696 (1982)].

He chose not to analyze, nor even address the Michigan authority cited in the lower court opinion.

In fact, the lower court based its decision upon a Michigan Supreme Court case which was factually identical to the instant action. People v. Grimmett, 388 Mich 590; 202 N.W. 2d 278 (1972), overruled on other grounds, 390 Mich 245, 258 (1973). In Grimmett, *supra*, the defendant contended that his right to a speedy trial was violated by the 19-month delay between his arrest and his indictment on the charge of assault with intent to commit murder. 388 Mich 590, 601. The Michigan Supreme Court held that the right to a speedy trial attaches to the period of time between an arrest and an indictment, citing United States v. Kaufman, 311 F. 2d 695 (CA 2, 1963); Hardy v. United States, 119 U.S. App. DC 364; 343 F. 2d 233 (1964), then went on to apply the balancing test, as espoused in Barker v. Wingo, 407 U.S. 514; 92 S. Ct. 2182; 33 L. Ed. 2d 101 (1972), to determine whether the right to speedy trial had been violated.

The above, narrow rule of Grimmett, relied upon by the Michigan Court of Appeals in this case and dispositive of the sole issue before this court, was adopted in People v. Fiorini (on rehearing), 59 Mich. App. 243; 229 N.W. 2d 399 (1975).

In the case at bar, the lower court held, further, that the speedy trial right is not dependent upon whether the defendant is kept in custody. People v. Den Uye, 320 Mich. 477; 31 N.W. 2d 699 (1948).

The Petitioner failed to address the state authority which,

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independently, is dispositive of the issue in Respondent's favor. The decision of the Michigan Court of Appeals is correct and is in conformity with federal and state law: and as such, will affect few others than the litigants.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the petition for a writ of certiorari.

Respectfully submitted,

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-vs-

RONNIE WILLIAMS,

Respondent.

PROOF OF SERVICE

I, the undersigned, hereby certify under penalty of perjury that a copy of Motion for Leave to Proceed in Forma Pauperis and Brief in Opposition to Petition for Writ of Certiorari and Appearance has been served on:

Frank J. Kelly, Attorney General  
525 W. Ottawa  
760 Law Building  
Lansing, MI 48913

Wayne County Prosecutor  
1441 St. Antoine  
Detroit, MI 48226

by placing said documents in a properly addressed envelope with postage prepaid and placing said envelope in the United States Mail in the City of Detroit, Michigan, on this 4th day of May, 1987.

Said pleading was filed in the Supreme Court of the United States by depositing in the United States Mail on this 4th day of May, 1987, addressed as follows:

Joseph F. Spaniol, Jr., Clerk  
Supreme Court of the United States  
Office of the Clerk  
Washington, D.C. 20543

*Erica Walna Walker*

Subscribed and sworn to before me  
this 4th day of May, 1987

*Erica Walna Walker*  
ERICA WALNA WALKER, Notary Public  
Wayne County, Michigan  
My Commission Expires: 2/10/88

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